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September 23, 2024

**ECF**

Hon. Sarah L. Cave  
United States Magistrate Judge  
United States District Court  
Southern District of New York  
500 Pearl St.  
New York, NY 10007-131

**Re: *Cynthia Herrick et al. v. Shutterstock, Inc.*, 1:23-cv-03191-JPC**

Dear Judge Cave:

Pursuant to the Court’s August 28, 2024 and September 10, 2024 Orders, Plaintiff Cynthia Herrick (“Plaintiff”), on behalf of herself and all others similarly situated, and Defendant Shutterstock, Inc. (“Shutterstock” and together with Plaintiff, the “Parties”) submit this joint letter to advise the Court of the Parties’ plan regarding document discovery relevant to classwide merits issues.

The Court previously denied Shutterstock’s request for bifurcation of discovery as to Plaintiff’s individual claim and issues relevant to class certification. As directed, the Parties have met and conferred about Plaintiff’s document requests and to highlight any disputes that are ripe for the Court’s consideration for a September 27, 2024 hearing, with the expectation that Shutterstock will produce to Plaintiff a reasonable set of responsive documents necessary for Plaintiff’s motion for class certification and the merits of Plaintiff’s case.

The Parties have agreed to the following procedure for responding to Plaintiff’s Requests for Production Nos. 15, 33, 37, 38, 44-71<sup>1</sup>, to the extent those requests seek documents related to demands Shutterstock has received to take down images for claimed infringement of copyright and its responses thereto.<sup>2</sup> Pursuant to the agreement, Shutterstock will identify images it has removed as a result of takedown requests during the period from April 17, 2020 through September 12, 2024 that, prior to removal, had been licensed to Shutterstock’s customers. Shutterstock will then produce records related to a representative sample of those images comprised of 15 percent (15%) of the total, randomly selected through an agreed upon procedure. Based on Shutterstock’s review, it represents that there are approximately 13,000 images in this time range that were subject to a takedown request that were identified as copyright takedowns, and that had been licensed prior to Shutterstock receiving a takedown request, meaning Shutterstock would produce records related

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<sup>1</sup> A true and correct copy of Plaintiff’s First Set of Requests for Production is attached here as **Exhibit A**.

<sup>2</sup> The requests are not limited to only seeking this information, but the Parties anticipate working through any issues with responses and objections to the remaining issues related to these requests separately.

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to approximately 1,950 images. Plaintiff reserves the right to seek to expand the time range given the current law regarding the discovery rule applicable to copyright claims and a three-year lookback from the date of discovery of an infringement. Shutterstock will also produce a list of the 13,000 images including, but not limited to the following categories of data: the dates the images were licensed to a Shutterstock customer, the dates the takedown notices were received, and the date the images were removed from Shutterstock's website. The parties continue to meet and confer about additional data fields that are to be included in the list of approximately 13,000 images.

Because of the nature of Plaintiff's requests and documents likely responsive to those requests that are in the possession, custody and control of Shutterstock, the Parties anticipate that they will need to further meet and confer to determine additional categories of documents Shutterstock will be required to produce for each image in the sample set, and will attempt to resolve this aspect of the matter without the need for Court intervention. At minimum, Shutterstock anticipates that it will provide data related to each account file, takedown notices/requests it received, any response to or action taken in response to the takedowns, and information on licensing of the photographs prior to their takedown, including revenue generated, and communications between Shutterstock and any licensees in response to the takedown notices/requests.

Thank you for the Court's attention to this matter.

Respectfully submitted,

*/s/ James Rosenfeld*  
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Cc: Counsel of record via ECF